IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.963 OF 2005
IN
NOTICE OF MOTION NO.2939 OF 2005
IN
SUIT NO.2686 OF 2005

Niraj Cement Structures Pvt.Ltd. — Appellant
vs.
1.Mumbai Metropolitan Regional Development Authority & ors. — Respondents

Mr.Tejas Deshpande for the appellant.

Mr.M.S.Thorat i/b.Mr.M.V.More for the respondent no.1.

Mr.K.A.Suryanarayanan for the respondent no.2.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 17th November 2005

P.C.

Heard Mr.Tejas Deshpande, the learned counsel for the appellant.

2. The appellant before us is the plaintiff. In the Suit, the plaintiff prayed that the defendant no.1 be restrained from invoking the Bank Guarantees (11 in all) and the defendant no.2 be restrained from paying to the defendant no.1 under the said Bank Guarantees. The plaintiff took out notice of motion for interim relief and prayer was made for grant of ad-interim relief. Pending consideration of the notice of motion, the learned motion Judge declined to grant any ad-interim relief. Hence the appeal by the plaintiff.

3. The learned counsel for the appellant (plaintiff) contended before us that in the letter invoking the Bank Guarantees it is not stated that the contractor and the sub-contractor committed breach of the terms and conditions of the Contract and in the absence thereof, the invocation of Bank Guarantees was not legal and justified. The reliance was placed by the learned counsel for the appellant on the Judgement of the Supreme Court in the case of Hindustan Construction Co.Ltd. v. State of Bihar, A.I.R. 1999 S.C.3710.

4. What has been emphasised by the Supreme Court in the case of Hindustan Construction Company is that terms of the Bank Guarantee are material and that the invocation of the Bank Guarantee has to be in accordance with the terms thereof. It does not mean, in our opinion, that in the letter of invocation the terms of the Bank Guarantee has to be incorporated word by word. The relevant clause of the guarantees, prima facie, at the stage of consideration of the matter for ad-interim relief appears to us to be providing for unconditional and irrevocable guarantee as primary obligator and non-mention of breach of terms of contract in the invocation letter cannot be said to invalidate the invocation of the Bank Guarantees. In the reply filed by the defendant no.1 to the notice of motion it is stated that breaches have been committed by the contractor and the sub-contractor. Be that as it may, so far as the refusal to grant ad-interim relief is

concerned, we hardly find any case to interfere with the said order of the learned motion Judge. We are not dealing with the matter at length as the notice of motion is pending and any consideration at length by us may prejudice the consideration of the notice of motion on merits by the learned motion Judge.

5. The contention of the learned counsel for the appellant that invocation of the Bank Guarantees is also bad because the Bank Guarantees have expired on 27.9.2005 does not seem to be sound as the invocation of the Bank Guarantees was already done by the invocation letter dated 22.9.2005. The defendant no.1 invoked the Bank Guarantees before their expiry; what is left is the payment to be made to the defendant no.1 by the defendant no.2.

6. The appeal does not deserve to be admitted and is dismissed in limine. The ad-interim order stands discharged.

7. Oral prayer for stay is rejected.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)